

EXHIBIT 53

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FINJAN, INC., A DELAWARE
CORPORATION,

CASE NO. CV-15-03295-BLF

PLAINTIFF,

VS.

SAN JOSE, CALIFORNIA

OCTOBER 31, 2017

BLUE COAT SYSTEMS, INC.,

VOLUME 2

DEFENDANT.

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SEALED PAGES 385-386

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE AND A JURY

A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFF: KRAMER, LEVIN, NAFTALIS & FRANKEL,
LLP
BY: PAUL J. ANDRE
LISA KOBIALKA
JAMES HANNAH
KRISTOPHER KASTENS
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MENLO PARK, CALIFORNIA 94025

FOR THE DEFENDANT: QUINN, EMANUEL, URQUHART & SULLIVAN
LLP
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CHICAGO, ILLINOIS 60661

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

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CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY,
TRANSCRIPT PRODUCED WITH COMPUTER.

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1 APPEARANCES: (CONT')
2 FOR THE DEFENDANT: MORRISON & FOERSTER
3 BY: STEFANI SHANBERG
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5 ROBIN BREWER
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JASON YOUNG

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1 SAN JOSE, CALIFORNIA OCTOBER 31, 2017

PROCEEDINGS

08:30AM 3 (JURY OUT AT 8:30 A.M.)

08:30AM 4 THE CLERK: CALLING CASE 15-3295, FINJAN VERSUS

08:30AM 5 BLUE COAT SYSTEMS.

08:30AM 6 THE COURT: ALL RIGHT. GOOD MORNING EVERYONE. WE

08:30AM 7 ARE OUTSIDE OF THE PRESENCE OF THE JURY AND WE'RE GOING TO

08:30AM 8 HANDLE SOME MOTIONS THIS MORNING TO TRY TO CLEAR THE WAY FOR AN

08:30AM 9 EASY PRESENTATION.

08:30AM 10 MR. ANDRE.

08:30AM 11 MR. ANDRE: YOUR HONOR, WE HAVE A COUPLE OF ISSUES.

08:30AM 12 THE FIRST IS REGARDING ONE OF THE JURORS.

08:30AM 13 THE COURT: OKAY.

08:30AM 14 MR. ANDRE: WE MET AND CONFERRED TO TRY TO GET

08:31AM 15 JURORS OUT FOR CAUSE AND THERE'S JUROR NUMBER 3, ANGELO MARCHI,

08:31AM 16 AND ON HIS QUESTIONNAIRE HE WROTE SOME PRETTY HIGHLY

08:31AM 17 INFLAMMATORY ANSWERS.

08:31AM 18 I'M CONCERNED THAT QUESTIONING OF THIS WITNESS WILL, OR

08:31AM 19 HAS POTENTIAL TAINING OF THE JURORS. IN PARTICULAR, QUESTION

08:31AM 20 NUMBER 30.

08:31AM 21 THE COURT: YES. LET ME PULL HIS QUESTIONNAIRE.

08:31AM 22 I'M SORRY. I'M A LITTLE BIT BEHIND. QUESTION 30?

08:31AM 23 MR. ANDRE: YES, ON PAGE 10.

08:31AM 24 THE COURT: OKAY.

08:31AM 25 MR. ANDRE: HE ASKED ABOUT HAVING STRONG OPINIONS

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04:06PM 1 POTENTIAL LICENSEE THE SAME?

04:06PM 2 A. NO, THEY'RE NOT THE SAME.

04:07PM 3 Q. OKAY. SO WHAT ARE THE VARIABLES THAT YOU ENCOUNTER?

04:07PM 4 A. SOMETIMES YOU GET VERY LITTLE INFORMATION ON REVENUES;

04:07PM 5 SOMETIMES YOU GET VERY PRECISE INFORMATION ON REVENUES.

04:07PM 6 WE HAVE COMPANIES THAT SOMETIMES VERY EARLY IN THE PROCESS

04:07PM 7 WILL DEMONSTRATE THAT NOT ONLY DO THEY DESIRE TO MOVE QUICKLY

04:07PM 8 IN THE LICENSE, BUT THEY WANT US TO BE FULLY AWARE OF THE

04:07PM 9 REVENUES THAT THEY HAVE IN EACH CATEGORY. SO, FOR EXAMPLE,

04:07PM 10 THEY WOULD PROVIDE A SPREADSHEET.

04:07PM 11 SO IN THOSE INSTANCES THE NEGOTIATION VERY QUICKLY BECOMES

04:07PM 12 ABOUT WHAT ARE WE APPLYING THOSE RATES TO.

04:07PM 13 SO SOME MOVE QUICKLY. SOME TAKE MUCH LONGER. AND SOME,

04:07PM 14 UNFORTUNATELY, END UP IN COURTROOMS.

04:07PM 15 Q. SO LET'S -- WE HAVE A SLIDE HERE, FINJAN LICENSEES,

04:07PM 16 PARTNERS, AND VERDICTS, AND I'D LIKE TO TALK ABOUT THE

04:08PM 17 LICENSES.

04:08PM 18 SO OVER THE YEARS WHO HAS BEEN LICENSED?

04:08PM 19 A. WE HAVE LICENSED OUR TECHNOLOGIES FOR USE. WE HAVE

04:08PM 20 LICENSED OUR PATENTS. I THINK THOSE WOULD BE THE TWO THINGS

04:08PM 21 THAT WE HAVE LICENSED.

04:08PM 22 Q. AND WHO HAVE YOU LICENSED -- WHO ARE YOUR PARTNERS?

04:08PM 23 A. SO WE HAVE I THINK 15 OR 16 LICENSEES. SOME OF THOSE ARE

04:08PM 24 JUST LICENSING AGREEMENTS; SOME OF THOSE ARE BROADER

04:08PM 25 RELATIONSHIPS WHERE WE HAVE TECHNOLOGY THAT MAYBE WE

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04:08PM 1 INCORPORATE FROM THOSE PARTNERS INTO OUR PRODUCTS; AND

04:08PM 2 SOMETIMES THERE ARE SORT OF MORE SUBTLE COMPONENTS THAT WE SORT

04:08PM 3 OF INTERACT WITH OUR PARTNERS ON. SOMETIMES THEY'RE VERY

04:08PM 4 DETAILED.

04:08PM 5 BUT MOST OF THEM, IF NOT ACTUALLY I THINK ALL OF THEM, ARE

04:08PM 6 ALL WITHIN THE CYBER SECURITY INDUSTRY.

04:09PM 7 Q. AND DO ALL OF THE LICENSES THAT WE'RE GOING TO WALK

04:09PM 8 THROUGH, DO THEY INVOLVE EITHER PATENTS THAT ARE AT ISSUE IN

04:09PM 9 THIS CASE OR PATENTS THAT ARE RELATED?

04:09PM 10 A. YES.

04:09PM 11 Q. SO WHAT WAS THE FIRST COMPANY THAT FINJAN LICENSED ITS

04:09PM 12 PATENTS TO?

04:09PM 13 A. IN 2005 FINJAN SIGNED A LICENSE AGREEMENT WITH MICROSOFT.

04:09PM 14 Q. AND CAN YOU TELL US THE CIRCUMSTANCES OF THAT AGREEMENT?

04:09PM 15 A. MICROSOFT, OBVIOUSLY A VERY BIG COMPANY, WAS NEW IN

04:09PM 16 ENTERING THE SECURITIES SPACE, AND SO THE ABILITY OF A COMPANY

04:09PM 17 LIKE FINJAN TO HAVE ITS FIRST LICENSEE BE MICROSOFT WAS REALLY

04:09PM 18 IMPORTANT. IT WAS REALLY AN IMPORTANT AGREEMENT WITH THE

04:09PM 19 COMPANY AT THE TIME.

04:09PM 20 Q. AND WHAT WERE THE GENERAL COMPONENTS OF THAT?

04:09PM 21 A. SO THERE WERE A COUPLE OF COMPONENTS OF VALUE. THE FIRST

04:10PM 22 IS THAT THEY PAID A LICENSING FEE TO FINJAN. THEY ALSO MADE AN

04:10PM 23 EQUITY INVESTMENT IN FINJAN.

04:10PM 24 AND THERE WERE OTHER COMPONENTS THAT WE RECEIVED AS PART

04:10PM 25 OF THAT PARTNERSHIP AND LICENSE THAT INCLUDED A DISTRIBUTION

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04:10PM 1 PARTNERSHIP THAT WE HAVE WITH MICROSOFT. AS WELL AS MARKETING

04:10PM 2 SUPPORT.

04:10PM 3 AND SO, YOU KNOW, CERTAINLY WHILE THE CASH INFUSION WAS

04:10PM 4 IMPORTANT TO THE COMPANY, I THINK FOR A SMALL COMPANY LIKE

04:10PM 5 FINJAN AT THE TIME, THE ABILITY TO HAVE THE INDUSTRY RECOGNIZE

04:10PM 6 FINJAN'S TECHNOLOGY WAS REALLY TRANSFORMATIVE.

04:10PM 7 IN FACT, WE WERE INVITED TO SET UP WITHIN MICROSOFT'S

04:10PM 8 BOOTH AT THE BIGGEST SECURITY CONFERENCE EVEN STILL TO THIS

04:10PM 9 DAY, WHICH IS CALLED RSA, AND IT HAPPENS HERE EVERY YEAR IN

04:10PM 10 SAN FRANCISCO.

04:10PM 11 Q. AND THEN ON THE TIMELINE WE ALSO HAVE M86 SECURITY, AND

04:11PM 12 TRUSTWAVE. COULD YOU TALK A LITTLE BIT ABOUT THOSE LICENSES?

04:11PM 13 A. RIGHT. SO THAT WAS THE NEXT LICENSE FOR FINJAN WHICH WAS

04:11PM 14 M86. WE TALKED A LITTLE BIT ABOUT THAT.

04:11PM 15 SO IN THAT ARRANGEMENT NOT ONLY DID FINJAN GET 25 PERCENT

04:11PM 16 EQUITY IN WHAT WAS M86, BUT THAT PARTNERSHIP CONTINUED WELL

04:11PM 17 INTO THE RELATIONSHIP WITH TRUSTWAVE.

04:11PM 18 Q. AND WAS THAT ABOUT THE 2009 TIMEFRAME?

04:11PM 19 A. YES, IT WAS.

04:11PM 20 Q. OKAY. AND WAS THAT AN IMPORTANT RELATIONSHIP TO FINJAN?

04:11PM 21 A. WELL, CERTAINLY WE HAD A VESTED INTEREST. IT WASN'T JUST

04:11PM 22 PURELY A LICENSE AGREEMENT.

04:11PM 23 IF YOU CAN IMAGINE, YOU KNOW, WE HAD SOLD A LOT OF THESE

04:11PM 24 BOXES AND THEY REQUIRE UPDATES. AND SO EVEN AFTER WE

04:11PM 25 TRANSFERRED A LOT OF THE OPERATIONS TO M86 AND THEY WERE LATER

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04:11PM 1 TRANSFERRED TO TRUSTWAVE, WE CONTINUED TO MANAGE THE

04:12PM 2 INFRASTRUCTURE THAT WOULD PUSH ALL OF THE UPDATES DIRECTLY TO

04:12PM 3 THOSE BOXES SO THE THINGS THAT WOULD MAKE THEM CURRENT AND KEEP

04:12PM 4 THEM PATCHED AND AVAILABLE AND, YOU KNOW, SORT OF OBVIOUS ABOUT

04:12PM 5 THE RELATIONSHIP THAT WE HAD WAS IMPORTANT.

04:12PM 6 Q. DID THAT PARTNERSHIP RELATIONSHIP CARRY FORWARD TO

04:12PM 7 TRUSTWAVE?

04:12PM 8 A. IT DID, YES.

04:12PM 9 Q. AND SO WHEN WAS THE TRUSTWAVE LICENSE AGREEMENT?

04:12PM 10 A. THAT WAS IN 2012.

04:12PM 11 Q. AND COULD YOU JUST TALK A LITTLE BIT ABOUT THAT AGREEMENT?

04:12PM 12 A. SURE. TRUSTWAVE ACQUIRED M86, I THINK I INDICATED

04:12PM 13 EARLIER, FOR SEVERAL HUNDRED MILLION DOLLARS. AND WHEN I

04:12PM 14 MENTIONED PRICE PROTECTIONS EARLIER, THIS WAS ONE OF THE

04:12PM 15 EXAMPLES WHERE IT CAME INTO PLAY.

04:12PM 16 SO THE LICENSE THAT WE HAD GRANTED TO M86 IN THIS INSTANCE

04:12PM 17 ACTUALLY DID NOT CARRY TO TRUSTWAVE. SO BEING THAT WE WERE

04:13PM 18 PARTNERS, WE WERE ABLE TO SIT DOWN AROUND THE TABLE AND HAVE A

04:13PM 19 CONVERSATION, AND WE AGREED ON A LICENSE EXTENSION SPECIFICALLY

04:13PM 20 TO TRUSTWAVE.

04:13PM 21 MS. KOBIALKA: YOUR HONOR, AT THIS TIME I WOULD LIKE

04:13PM 22 TO PUBLISH AND MOVE THE JOINT EXHIBIT 3076.

04:13PM 23 THE COURT: NO OBJECTION?

04:13PM 24 MS. SHANBERG: NO OBJECTION, YOUR HONOR.

04:13PM 25 THE COURT: ALL RIGHT. JOINT EXHIBIT 3076 WILL BE

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